

**AMESBURY CONSERVATION COMMISSION**  
**Amesbury City Hall Auditorium, 62 Friend Street,**  
**Monday, February 4, 2013 at 6:30 P.M.**

**Present:** Steve Langlois (Chair), Madeleine Howard, Jack Tremblay

**Absent:** Michael Bik

**Also Present:** John Lopez, Agent; Paul Bibaud, Recording Secretary

**Meeting is called to order at 6:40 P.M.**

**MINUTES:**

**12-17-12: Not addressed.**

**1-7-13: Not addressed.**

No minutes were addressed due to lack of quorum. They are continued to the next meeting.

**CONTINUED BUSINESS:**

**Enforcement Order / Cease and Desist – DEP # 002-1029**

**206 Lions Mouth Road (Couillard)**

**John Lopez:** This concerns a cease / desist order which was implemented and modified in support of an open Order of Conditions on Quimby Lane. We've had one enforcement order that was modified. The Commissions consultant, BSC, working with the applicant's representative, conducted a site visit. Before us tonight is the second part of the consultant's work, which was divided up into two phases. This was a timely issue, so the commission issued under an enforcement order for BSC to go out and implemented emergency orders to stop or halt sediment transport from the site into a bordering vegetated wetlands and then offsite into a neighboring pond on private property, and that was done. The second half of the enforcement order required an additional contract with BSC to implement more of a longer term remediation plan, working with the applicant's representative for submission, also for monitoring during the project. For tonight's hearing, the applicant has his attorney, and the committee is represented by city council. So the commission has received two contracts from BSC. The applicant who would like his counsel to speak in reference to those contracts, and then we'll hear from council for the City.

**Matthew Watski, council for applicant:** I'm here with Mr. Couillard, applicant, along with the project's site manager, Mr. Couillard's son. Leah Basbain has been very busy on the site and accomplished all the action items on the list that BSC had put together. I am here for her as she is on vacation. I'm here to speak to the responsiveness of the applicant to the list of action items provided by BSC that they and Leah agreed should be done. The applicant received since your last meeting, a memorandum from BSC outlining the action items to be addressed, including draining the detention basin at a time when no rain storms were forecasted over several days thereafter. Once it was drained, then excavate to remove all the accumulated sediment and siltation material in the basin, then to install a riprap base and flocculation blankets, to ensure that the basin is not a source of sediment going forward. In the January 14 report from BSC identified that it had observed the site and the down-gradient wetlands. Their conclusions were that, although it appeared to a lay person's perspective that there was a significant problem, they concluded that there was actually very little material that had been released off of the site. In the basin was a very fine material that was easily disturbed after a significant rain event that washed it down stream to appear like it was a significant problem. It was appropriate to have gone

ahead and investigated it, then taken steps to make sure that didn't happen again. BSC concluded, though, that there was very little material that was deposited into the wetlands immediately downstream or into the pond. I will hand out packets of memos from Leah Basbain over several dates outlining her reports during this event in reverse chronological order. By Feb. 2<sup>nd</sup>, she reports that all work has been completed: removal of all accumulated sediments, placement of stone in the basement, polymer infused jute matting installed at the V- notch headwall, flock logs have been placed in three locations, catch basin silt sacks have been cleaned and reinstalled, and additional filter fabric mats have been installed on the catch basin grades. Leah's conclusion is that there is no water leaving the site and there is no sediment in the basin to get disturbed by water flowing into it. The basin should operate as designed, which, actually, it did during this event. The reports over the course of that month following the event show an intense amount of work done to resolve any problem. BSC guidance notes claim that the project is nearing completion and recommends that certain additional things be done: exposed soils should all be mulched (this has been done) and one final thing that can't yet be done is the sodding of exposed soils should be done as soon as weather conditions allow. Applicant is prepared to do this. That will make for a fully stabilized site. This satisfies the initial enforcement order. Now the question is, how do we move forward?

**John Lopez:** We are now ready to begin to implement phase 2 of the enforcement order, which is to develop a draft remediation plan which would further assess offsite sediment transport into a neighboring pond, to determine the extent of that sediment transport, and to figure out what should be done, if anything. So this will be more of a remediation phase. The initial sediment transport has been halted to the satisfaction of Ms. Davies. The two contracts the commission has in front of them are pursuant to phase 2, the remediation plan. That would include the applicant's representative Ms. Basbain's drafting a remediation plan, working with Ms. Davies to develop a final remediation plan which would be forwarded to the commission, with recommendations from Ms. Davies to approve. That would then be implemented by Ms. Basbain, with monitoring taking place by BSC to insure that the remediation is done pursuant to the approved remediation plan.

**Commissioner Howard:** So the scope of our work is, we now have two proposals from BSC, one dated the seventeenth and one dated the twenty-eighth. So what this commission needs to do, since we've already decided very firmly and clearly that we have BSC, what we need to decide is which of these contracts we want to go with. Correct?

**Agent Lopez:** Which contract you want to go with, or perhaps enter into deliberations on another contract: one that might have reduced monitoring, one that might be modified a bit through negotiations.

**Commissioner Howard:** Why would we want to reduce monitoring, when there is a history to this situation. We are in this position because we really didn't have the environmental monitor that we wanted from the beginning. Should we now hear from city council?

**Agent Lopez:** Sure. One thing to remember to include in your deliberations is if we are doing remediation and the site is stable, then it becomes a point of discussion as to what would be the frequency of site inspections.

**Matthew Watski:** That is our biggest concern, also. The site has been deemed stable. The origin of the problem, excessive sediment in the detention basin, has been corrected. There is no more cause of issues at this time. To say that the site needs weekly monitoring isn't necessary, and the cost to such monitoring is excessive. Looking at the contract over the last 8 weeks, the bill is over \$21,000. BSC should not be suggesting that weekly monitoring is necessary. We don't feel that that is reasonable.

**City Counsel Mark Reich:** The issue arose from sedimentation breaking out and entering an abutter's property, leaving significant amounts of sediment in his pond. Apparently up to December of last year, there were other incidents of breakout. A significant amount of work has been done on the site, but the

site is also frozen. There is no way of determining whether it has been successfully remediated at this point. The issue now is phase 2 of the project, which is remediation. The issues are the fee schedule and the agreements that you have before you. There are two agreements. BSC has suggested a fairly aggressive monitoring program that was deemed appropriate from the ongoing concerns that resulted from the significant issues that were earlier observed. Unfortunately, there is no way of knowing what the circumstances are right now. Come the next season and next rain event, it needs to be determined how stable the site is now, after the work Ms. Basbain has done. The commission is not bound by the contract presented to you by BSC. There is an appropriate level of monitoring and oversight in terms of review of the remediation plan and observation in the field. You need to determine allowable and reasonable observation as well as a reasonable fee. The reason this matter is before you is the reasonableness of the fee. You as a commission can execute any contract you want. If the commission wants more monitoring, that's an issue for the commission. The issue is what is reasonable regarding the work needing to be done and the cost to be passed on to the applicant. The issue is whether the commission feels that the monitoring suggested by BSC is appropriate and reasonable. It doesn't say the applicant decides what is reasonable. However, the applicant can then challenge or refuse to pay, then that becomes an issue for further enforcement between the Conservation Commission and the applicant.

**Chip Lynch, abutter:** I live at 13 Elizabeth Street, and I own the pond. I think monitoring every day in the winter is unreasonable. However, to think that there is no need for an independent monitor is also unreasonable. I get concerned when I hear some of the things in the record, such as the reports suggesting that is no problem with the transported sediment down to my pond and wetlands...that is not what the document says. It says there **might not be** a problem. I hope that's true. There might be some reason to think that it is, but there is no way of determining that until it is examined in the spring. That's the fact that wasn't told. This is not about **an event** that happened this past December. There were two events: one with a moderate amount of rain at most, followed by several events in years past. So it is not a one-time event, and it is unknown as to whether there is any cumulative impact. I would also note that none of this revue and stabilization of the site happened until somebody complained, and it was a mess. I don't believe the detention basin is operating as designed, since sediment is moving out. The applicant claims it's a small amount of sediment. Its not supposed to create a plume in a pond several hundred yards away, and then into the wetland beyond that. I don't believe it is fixed and I need not worry. What is reasonable has to be decided under the context of what has happened here. Not just going forward but what has happened here. My concern is that history has shown that, unless there is independent monitoring, that these things could happen again. I'm not worried about wintertime, but I am worried about the first thaw. That thaw could take place in February, and the growing season starts in April. That's a couple months of heavy rain, and we'd be right back where we started. I urge the commission to stay the course. It can't be ignored the way it was in the past.

**Attorney Watski:** I look forward to working with everyone involved and come up with a reasonable scope of services and monitoring schedule that we can agree to.

**Commissioner Howard:** We're talking about BSC being the monitor for the commission, correct?

**Attorney Reich:** That is correct. The applicant has their own monitor, Ms. Basbain.

**Commissioner Howard:** *I move that we continue this matter to the March 4<sup>th</sup> meeting, at which time the commission will be presented with a new contract delineated by BSC as the monitor for this project. Agent Lopez amends that the commission authorizes the agent to work with city council, the applicant's council and representative, and BSC representative to draft the aforementioned proposal. Ms. Howard so moved as stated by Agent Lopez. Commissioner Tremblay adds also that a deadline be established, which will be the next meeting. Ms. Howard states "so amended." Motion is seconded by Jack Tremblay. Vote was unanimous.*

## **ENFORCEMENT ORDER: CEASE AND DESIST DEP # 002-1005**

### **100-108 WHITEHALL ROAD (Gagnon)**

**Chair Langlois** opens the meeting on 100-108 Whitehall Road, DEP # 002-1005.

**Agent Lopez, report update:** The applicant is here. This is just an administrative item.

Pursuant to the Conservation Commission's consultant, Beals and Thomas, we've received several reports, and the site is stable at this moment. We're now requesting a modified enforcement order to allow additional work to continue, and also amend it to include the recommendations for action as cited in the Feb. 4<sup>th</sup>, 2013 Beals and Thomas site memo.

***Motion by Commissioner Howard to continue the enforcement order and to include the recommended actions as cited in the 2-4-13 Beals and Thomas site memo, and the Cease and Desist is modified only pursuant to the Beals and Thomas recommendations, no other work, and that the matter be continued to the Mar. 4<sup>th</sup> meeting. Motion is seconded by Jack Tremblay. All in favor.***

## **ADMINISTRATIVE:**

### **ACCEPTANCE OF GOSS AVENUE PARCEL**

**City Attorney Reich:** On Feb. 18, 2010, a deed was presented to the city through the Conservation Commission for acceptance of so-called parcel 5-1 of Goss Avenue subdivision. The deed was presented by the owner and developer of that property, and received by the city by the Conservation Commission. For whatever reason, that deed was not formally voted upon, although it was accepted for presentation to the Conservation Commission. So the first action today is just to confirm that we can move forward would be the formal acceptance of that deed with the requirements of Chapter 40 Section C. I believe that a motion has been presented to you to allow for that acceptance. The deed has been received by the city, signed by the property owner, so we just need the commission to formally vote to accept the deed, so it can then go to City Council for final approval.

***Motion by Commissioner Howard to accept the deed from Yvan Cormier Construction Corporation for a certain parcel of land in Amesbury, Essex County, Massachusetts, located on the northerly side of Goss Avenue, being shown as parcel 5-1, on a plan of land entitled "plan of land in Amesbury, Massachusetts, prepared for the applicant John Cormier, dated Oct. 1, 2008, recorded with the Essex south registry of deeds in plan book 420, plan 60, pursuant to GL Chapter 40 Section 8 C. Motion is seconded by Jack Tremblay. Vote was All in favor.***

## **NEW BUSINESS:**

### **NOI # 002-1070 12 GOSS AVENUE (Yvon Cormier)**

**John Paulsen, Atlantic Engineering.** I have not seen the deed you are talking about. The owner has been paying taxes on the property. Before the city takes a deed, he should at least be getting his tax money back. Before this is done, it should come to us to have a chance to go to his attorney, rather than making an arbitrary acceptance of the deed several years after the fact without notification to the owners. That hasn't been done. Because of the confusion, I had asked for a continuance on the NOI. We have not notified the abutters, because I asked for a continuance, so we can't open the hearing. In their comments on the NOI, the state asked for additional wetlands to be flagged. That has not been done. So I don't think we should be opening a hearing on this, if in fact the city is taking a deed on this, then we should be getting our fees back, also, on this NOI, because apparently it should never have been filed.

**Mark Reich, City Counsel:** We just heard some comments from the purported owner's representative. I find his statements largely incredible, because back in 2008, the deed was presented to the city. The city didn't draft the deed, and the city didn't present the deed. The deed was presented to the city by the

owner. The city need not give any kind of notice to the applicant, because the applicant presented the deed. Once the deed was presented, the applicant had turned over ownership of the property. So for the statement by this representative to say the applicant is the owner of the property is factually incorrect. There is no support for that whatsoever. So no notice is needed and the acceptance is a formality. The fact that there may have been taxes is not a matter for the Conservation Commission. Regarding fees and filings, that is a matter of determination for the applicant. The commission can certainly decide to grant a continuance to allow the applicant time for further investigation. At this point, the application fails based upon the fact that the applicant failed to notify the owner in writing and get permission from the owner in writing to do the work that is supposed to be done. The owner is the city of Amesbury. I don't know where his statements are coming from, other than the fact that the applicant has apparently failed in his record keeping.

**John Paulsen, Atlantic Engineering:** My research at the registry did not show this deed as ever being recorded. The city has been assessing, and payments have been made based on the city saying the Cormiers are still the owners of the property. We asked for a continuance on this as far as the NOI is concerned, so we could go through the details.

**Chair Langlois:** The board is here for an NOI, to vote on whether to open or continue or whatever with this NOI.

**Agent Lopez:** The applicant can always withdraw the NOI without prejudice, but based upon city counsel's briefing, it would appear that this is a very simple, clear case of ownership.

**Chair Langlois:** Question for city counsel: when a deed is not registered, is it still a deed?

**Mr. Reich:** The purpose of a recording of a deed is to put the world on notice that makes the world aware of the circumstances of the property. It is not the sole manner of determining ownership of property. In this case, the individual questioning the deed is the individual who signed and notarized and presented that deed. The owners of the property are aware of this because they drafted the deed, signed it, notarized and presented the deed.

The commission has it in their power to grant a continuance to allow the applicant to research its own records and determine the origin of the signature on that deed.

**Agent Lopez:** The commission does have some jurisdiction over the fee. If the commission so wishes, I would suggest the commission make a motion to return all the fees to this date.

***Motion by Commissioner Howard that Conservation Commission rescind the fees paid by the applicant to the commission. I move that the Amesbury Conservation Commission deny the NOI of Yvon Cormier Construction Corporation for work proposed on the northerly side of Goss Avenue and being shown as parcel 5-1 on a plan of land in Amesbury, Massachusetts prepared for John Cormier, dated Oct. 1, 2008, recorded with Essex South Registry of Deeds in plan book 420, plan 60, as the applicant has failed to get written permission from the landowner prior to filing the NOI for the proposed work as required, under the provisions of 310 CMR 10.05 4A. Motion is seconded by Commissioner Tremblay. All in favor.***

***Motion by Commissioner Howard to close this matter. Motion was seconded by Commissioner Howard. Vote was All in favor.***

## **REQUEST FOR CERTIFICATE OF COMPLIANCE**

### **DEP# 002-0966 for 60 Pleasant Valley Road (Corey)**

**Agent Lopez:** This is a request for Certificate of Compliance in support of an Order of Conditions issued by this commission on Nov. 28, 2007 for the installation of a septic system. The Order of Conditions was issued to the previous property owner. A Certificate of Compliance was issued per order of the Amesbury Health Commission on Jan. 15, 2009, verifying that the structure was built to their

satisfaction. There are no outstanding issues. I recommend that the Certificate of Compliance be issued for this address and DEP # 002-0966.

***Motion by Commissioner Howard to issue the Certificate of Compliance on 60 Pleasant Valley Road.***

***Motion is seconded by Commissioner Tremblay. Vote was All in favor.***

***Motion by Commissioner Howard that we close this matter. Motion is seconded by Commissioner Tremblay. Vote was All in favor.***

#### **RDA 60 Pleasant Valley Road (Corey)**

**Agent Lopez:** This is continued from the previous meeting because of the outstanding Certificate of Compliance, which needed to be issued. Also there were concerns proposed from the original construction design of the deck located above the aforementioned septic system. The applicant has revised the plan which went before the ZBA and was approved. I've received correspondence via e-mail from the building inspector and the health inspector. Both have no further issues with this matter. I suggest that a negative determination be issued and I refer to my briefing memo dated Jan. 30 2013 to include the negative determination condition.

***Motion by Commissioner Howard that we issue a negative determination to include the following conditions: 1. posting of a sign stating ACC 002-60 be installed as a pre-construction condition. 2. Condition to revised plans, specifically A.0 through A.10 dated Nov. 3, 2012, titled Corey residence, 60 Pleasant Valley Road, Amesbury, MA. 3. A pre-construction site by agent to verify placement of the sign and erosion control per approved plan. Motion is seconded by Commissioner Tremblay. Vote was All in favor.***

***Motion by Commissioner Howard to close the matter, seconded by Commissioner Tremblay. Vote was All in favor.***

#### **IMPROMPTU comments addressing the Commission by Mr. Cormier of 12 Goss Avenue:**

It took 5 years to get this deed. This deed has been in your attorney's possession in Boston at their law firm. It seems Amesbury has hired this law firm, and everybody in town has had trouble with this law firm. It is not the Cormier's fault that this never got recorded. It took me 5 years, and it took me telling the town that I was going to put a house lot there to get action with this law firm. Then all of a sudden, the first night, they show up with the deed? It's bizarre. "You never gave us a deed for this property, Mr. Cormier." "Yes, I did" "You gave us a deed for the road, but you never gave us a deed for the property." "Yes I did, you're in possession of it."

This has been going on since 2008. I've been getting taxed on it. So finally I said I'm going to put a house there. Let's see if they show up with the deed. Guess what? The first time I ever met the man, he shows up here tonight with the deed. Isn't that convenient? This is what the city is hiring: a law firm out of Boston that over charges and are not reasonable.

**Agent Lopez:** Mr. Chairman, I don't think you should be allowing these comments. The hearing is closed. This gentleman had his representative here.

**Mr. Cormier:** You can strike it from the record. I'm just venting that for 5 years, I asked for my deed and tonight they produce it. I've been taxed on it, my name has been put in the paper, it's frustrating. I've been asking for this deed all this time, but the first night here they find it.

**Agent Lopez:** One thing I'd suggest, Mr. Cormier, is to put your thoughts down on paper and draft a letter to the mayor and may be the tax assessor.

**Chairman Langlois:** Thank you, sir.

#### **NOTICE OF INTENT DEP # 002-1050 for 16 PAIGE FARM ROAD (Moulton)**

No one is present for this hearing. Agent Lopez states that this has been continued now for close to a year. Mr. Lopez has contacted them repeatedly but never gets even a phone call returned. They've paid their NOI fee. The record has demonstrated the commission's willingness to work with them. This is in support of landscaping that does not meet the regulations or the performance standards. During my initial site visit, they were informed of this, I advised him to work with your consultant, and amend your plan. That was the last I heard from them. So the commission can issue the Order of Conditions but deny them the work. There is a little box on the Order of Conditions that ...

**Commissioner Tremblay:** I have to abstain, so we don't have a quorum.

**Commissioner Howard:** I don't understand the procedure, either. Please explain it to me.

**Agent Lopez:** The Order of Conditions would simply deny the work. You would provide written notice through the wetlands permitting process.

**Chairman Langlois:** Well, we have to continue this because we don't have a quorum on the vote.

***Motion by Commissioner Howard to continue this matter to the March meeting. Motion seconded by Commissioner Tremblay. Vote was All in favor.***

Chairman Langlois asked Agent Lopez to speak with Pamela to see how we should proceed with this in time for the next meeting. Agent Lopez agrees to do so.

#### **COASTAL TRAILS COALITION**

**Agent Lopez:** The issue before the commission would be to nominate a liaison from the commission to the Coastal Trails Coalition to act on behalf of this commission and the City of Amesbury on appropriate issues.

***Commissioner Howard volunteers to be the commission's liaison to the Coastal Trails Coalition.***

***Commissioner Tremblay seconds that nomination. Vote is All in favor.***

**Request for Certificate of Compliance DEP# 002-0988 Timber Lane / Spring Hill (Wojcicki)**  
Continued to Mar.4, 2013 meeting.

**NOI DEP# 002-1015 Village At Bailey's Pond**  
Basic Review (Fafard) Continue to March 4,2013 meeting.

**Request for Certificate of Compliance DEP # 002-1050 Route 110 / NATIONAL GRID**  
Continue to April 1, 2013 meeting.

***Motion to adjourn the meeting by Commissioner Howard. Motion is seconded by Jack Tremblay. Vote was All in favor.***

**Meeting is adjourned at 8:05 P.M.**